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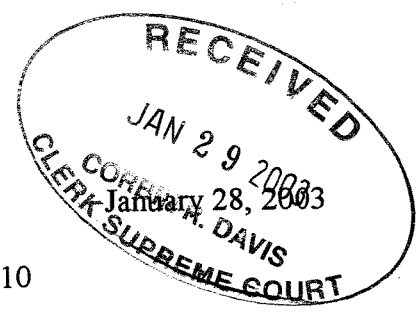


Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48933

January 28, 2003

Re: ADM File No. 2002-13, Proposed Amendment of MCR 3.210

This proposed amendment requires further definition. What does it mean to "seal" the transcript of a reasonable preference interview? Can the attorneys for the appellant and appellee access the transcript and cite it in their briefs? Do the briefs and court file then have to be sealed? Can the attorneys divulge what they learn to their clients? Surely the appeal cannot be turned into a Star Chamber proceeding, where the appellate judges peek surreptitiously into the sealed record, the contents of which are unknown to the parties or their attorneys, only to announce that the custody decision is affirmed or reversed for reasons that must remain secret?

If attorneys cannot divulge such information to their clients, how can the clients know if they are being well-served or victims of malpractice, or even whether they should pay their bills? If the attorneys cannot access the sealed transcripts, how can they represent their clients effectively? How do court staff or judges themselves access such transcripts (this may sound like a silly inquiry, but undersigned had the recent experience of submitting a motion and supporting brief under seal to Judge Robert Ransom, only to appear for hearing and find that Judge Ransom had not read the brief because it was sealed, although he was the one who ordered the file sealed)?

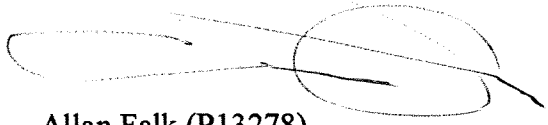
Meanwhile, if the attorneys have access and through them the parties (or parties proceeding without counsel), what is the advantage of sealing the transcripts? The public has no interest; only the parties can use and abuse the information therein, so sealing the transcripts has no relevant practical effect in protecting the children.

This whole proposal is thus misguided. The purpose of an in chambers interview is to take parental pressure off the child; recording the interview protects against a McMartin Preschool scenario of subliminally influencing the child to make a choice the judge prefers but cannot yet justify based on the evidence (this suggests such interviews should be conducted by another judge than the judge who will make the custody decision, who has to report the result to the adjudicating judge secretly, in case the adjudicating judge decides to give the child's preference no weight, when there is no reason to reveal the choice and much reason to conceal it). If the child has a preference, and if the court decides to weigh that preference, then the preference must necessarily be disclosed in the course of the court's findings and decision, with the transcript then available to verify the preference and to validate the manner in which that preference was expressed and acquired. In all other cases there is no reason to include the transcript as part of the record—no appellate court is going to overrule a trial judge and demand that a small child's

preference be given some or more weight; practically speaking, the issue on appeal will uniformly be whether less or no weight is proper.

There should also be different rules for children under 14 and those over 14 (that age being statutorily recognized, like the age of consent under the CSC statute, MCL 750.520a et seq., as a dividing line), and there should probably be a prescribed or at least a suggested format for in chambers interviews so the process will not be randomly variable from county to county and judge to judge. It should always be borne in mind that when the test on review is abuse of discretion, the individual idiosyncrasies of judges mean that the parties are not being accorded equal justice under law.

Respectfully submitted,



Allan Falk (P13278)